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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

CWT Canada II Limited Partnership, an Ontario, Canada Limited Partnership, et al.,

No. CV16-0607 PHX DGC
CV16-2577 PHX DGC
CV17-0969 PHX DGC
(consolidated)

Plaintiffs.

V.

Elizabeth J. Danzik, an Individual, et al.,

ORDER

Defendants.

Plaintiffs CWT Canada II Limited Partnership and Resource Recovery Corporation (collectively, “CWT” or “Plaintiffs”) move to strike certain defense theories raised by Defendants Tony Ker, Richard Carrigan, Elizabeth Danzik, and Danzik Applied Sciences, LLC (“DAS”) as barred by the doctrine of res judicata. Doc. 128. Plaintiffs also move for a protective order prohibiting Defendants from conducting discovery on the theories, and for an order quashing two nonparty subpoenas aimed at obtaining such discovery. *Id.* The motion is fully briefed. Docs. 133, 136. The Court will deny the motion.

I. Legal Standard.

Motions to strike are viewed with disfavor and are not frequently granted. S. Gensler, *Federal Rules of Civil Procedure, Rules and Commentary* at 302 (2017) (citing cases). They “should not be granted unless it is clear that the matter to be stricken could have no possible bearing on the subject matter of the litigation.” *Netflix, Inc. v. Blockbuster, Inc.*, No. C06-02361 WHA, 2006 WL 2458717, at *8 (N.D. Cal. Aug. 22,

1 2006). The Court's local rules attempt to curtail the overuse of motions to strike. *See*
2 LRCiv 7.2(m).

3 **II. Discussion.**

4 The Court's order of January 26, 2018, held that claims brought by Dennis Danzik
5 and RDX Technologies, Corp. were precluded because they could have been raised in a
6 prior action in New York involving the same parties and underlying transaction (the "New
7 York Action"). *See* Doc. 119 at 16-23. CWT now argues that the remaining Defendants,
8 who were not parties in the New York Action, are precluded from defending themselves
9 in this suit because "they are in privity with Dennis and RDX." Doc. 128 at 4. Plaintiffs
10 ask the Court to preclude Defendants from arguing "that (1) the CWT Parties defrauded
11 RDX into entering into the UPA; (2) RDX was entitled to retain the tax credits, either
12 because of the CWT Parties' alleged fraud or because of the terms of the UPA; (3) Dennis
13 did not convert the tax credits; and (4) RDX was not required to keep the tax credits it
14 received in a segregated account, or RDX was permitted to spend the tax credits upon
receipt." Doc. 128 at 5.

15 Plaintiffs' issue-preclusion argument is misguided. Even if the Court were to
16 assume that privity exists, Plaintiffs cite no authority for the proposition that the doctrine
17 of res judicata, also known as *claim* preclusion, can be used to preclude a party from
18 asserting particular *issues* in defense of a subsequent suit not initiated by that party. *See*
19 *Kret v. Brookdale Hosp. Med. Ctr.*, 462 N.Y.S.2d 896, 899 (App. Div. 1983), *aff'd*, 462
20 N.E.2d 147 (N.Y. 1984) ("[R]es judicata in the sense of claim preclusion 'involves the
21 question of whether a plaintiff's present claim, as distinguished from discrete issues
22 previously litigated, has been extinguished by a final adjudication in a prior
23 proceeding[.]'"). Plaintiffs do not argue that Defendants' theories are precluded by
24 collateral estoppel, which bars relitigation of particular *issues*, nor do they attempt to
25 show that collateral estoppel could be satisfied here. *See Specialty Restaurants Corp. v.*
26 *Barry*, 236 A.D.2d 754, 755-56 (N.Y. App. Div. 1997) ("Collateral estoppel or issue
27 preclusion 'bars relitigation of issues that have necessarily been determined in a prior
proceeding' . . . As the proponent of preclusion, it was plaintiff's burden to demonstrate

1 that the issue was actually litigated in [the prior proceeding].”). This likely is because the
2 issues were not litigated in the New York Action – they were resolved on the basis of
3 sanctions against Dennis Danzik and RDX.¹

4 Plaintiffs also argue – again on the basis of res judicata – that because Elizabeth
5 was in privity with her co-defendant in this case, Deja II, LLC, and the Court entered
6 default judgment against Deja II, Elizabeth is precluded from asserting any defenses that
7 Deja II could have asserted. Doc. 128 at 13-15. But Plaintiffs cite no precedent to
8 suggest that res judicata would bar a defendant from asserting particular issues simply
9 because her co-defendant defaulted. To the extent Plaintiffs believe that the Court should
10 pierce the corporate veil and hold Elizabeth liable for the judgment against Deja II, the
11 proper avenue to assert that argument is not a motion to strike.

12 Nowhere in Plaintiffs’ motion, reply, or more than 400 pages of supporting exhibits
13 do Plaintiffs provide relevant law to support their theory. This motion falls far short of
14 the clarity and rarity required for a motion to strike. Parties on all sides of this litigation
15 are cautioned to avoid such unnecessary filings in the future.²

16 **IT IS ORDERED** that the motion to strike Defendants’ defenses, to quash
17 nonparty subpoenas, and for a protective order (Doc. 128) is **denied**.

18 Dated this 8th day of March, 2018.

19
20 *David G. Campbell*
21

22 David G. Campbell
United States District Judge

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24 ¹ Defendants generally have not asserted counterclaims; they simply are attempting
25 to defend against CWT’s lawsuit. Defendant Ker has asserted a counterclaim for
26 defamation, but it does not appear that the claim arises out of the same transaction as the
New York Action (nor did Plaintiffs make this argument in their motion to dismiss the
counterclaim or in this motion).

27 ² Plaintiffs also argue that the defenses should be stricken because they are
28 “circular.” Doc. 128 at 13. The Court is aware of no law that would allow it to
summarily strike a party’s defense for this reason.